IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Suit No.32 of 2004

Date of decision : July 17, 2007

Dr. Karan J. Kumar **…Plaintiff.**

Versus

Government of Himachal Pradesh & another **…Defendants.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Plaintiff : **Mr. Lalit Sharma, Advocate.**

For the Defendants : **Mr. Ashok Chaudhary, Additional Advocate General, for defendant No.1.**

Mr. Bimal Gupta, Advocate, for defendant No.2.

Surjit Singh, Judge(Oral)

Plaintiff has filed a suit for damages amounting to Rs.10,49,23,859/-. His allegation is that he had been granted, by way of *Nautor,* certain piece of land on National Highway No.22 for setting up a petrol pump and a restaurant. The concerned authorities did not issue the no objection certificate for getting a petrol pump sanctioned and because of that petrol pump could not be established. However, the plaintiff constructed a building after obtaining permission from the concerned authorities and started a restaurant in that building in November, 1992. He had raised loan amounting to Rs.10,00,000/- from defendant No.2. When the loan was not paid because of certain difficulties faced by the plaintiff, he received a notice, under Sections 29 and 30 of the State Financial Corporations Act from defendant No.2, calling upon him to deposit the outstanding amount of Rs.13,15,141/-

---

Whether reporters of the local papers may be allowed to see the judgment?

(principal plus interest) by 21st February, 1994. Plaintiff approached the Officers of defendant No.2 with the request for extension of time by three more weeks. He personally visited the office of defendant No.2 where one Hitender Sharma met him and told him that time could not be extended and that the property would be publicized for sale with reserve price of not more than the money due. The plaintiff thereafter made last ditch effort to sell the property, so that the loan was repaid before the date mentioned in the notice. According to him, the property was worth Rs.65,00,000/- at that time and he feared that defendant No.2, in conspiracy with certain persons, was going to sell it off at a throwaway price equivalent to his loan liability. That was why he started making the efforts for the sale of the property at his own level. He entered into an agreement with two persons, named Chaman Lal Kakkar and Prem Sagar Mahajan, for the sale of the property for a sum of Rs.28,00,000/-, even though the value of the property was Rs.65,00,000/-. Those two persons discharged the liability of the plaintiff by paying the loan amount to defendant No.2. A sum of Rs.4,00,000/- was paid to the plaintiff also by those two persons. The rest of the amount remained unpaid because, in the meanwhile, the Divisional Commissioner (Revenue) and the Deputy Commissioner, Solan, initiated proceedings for the cancellation of *Nautor* in respect of the site on which the hotel building stood. Divisional Commissioner passed an order cancelling the *Nautor*. Plaintiff could not challenge that order because he met with an accident and remained confined to bed.

2. On March 12, 1995, plaintiff, while sorting out the old record, happened to lay hand on a letter dated 12th March, 1994, written by the Managing Director, Dr. Parmar, of defendant No.2 – Corporation, per which the time for the taking over of the property, in

question, had been extended upto 28th March, 1994. This fact had not been brought to the notice of the plaintiff by the functionaries of defendant No.2 inspite of his having visited the office of defendant No.2 several times between 17th February and 25th March, 1994. It is alleged that had the plaintiff been aware of the fact that the time for taking over his property had been extended upto 28th March, 1994, he would not have entered into any agreement with Chaman Lal Kakkar and Prem Sagar Mahajan for the sale of property at depressed price of Rs.28,00,000/-, who were otherwise also not eligible to purchase the property on account of their being non-agriculturist. The plaintiff has alleged that because of the concealment of this fact by the functionaries of defendant No.2 he has suffered loss of Rs.49,23,859/- being difference between the actual value of the property less the amount paid to him and the amount paid to defendant No.2 towards discharge of his liability by said Chaman Lal Kakkar and Prem Sagar Mahajan. Another sum of Rs.10,00,00,000/- has been claimed by him on account of non-liquidated charges for insulting him and putting him to irreparable loss. Cause of action is stated to have accrued on 12th March, 1995 when the plaintiff came to know about the letter dated 21st February, 1994, whereby the time for taking over of the hotel had been extended upto 28th March, 1994. It is also alleged that the cause of action again accrued on 12th May, 1998, when the plaintiff received reply to the notice under Section 80 CPC which he served upon the defendants.

3. Defendants contested the suit by filing separate written statements. One of the objections raised by the defendants is that the suit is barred by time. Issues were framed by this Court on 6th May, 2005. One of the issues pertains to the plea of limitation. The Court ordered that

the issue of limitation shall be treated as preliminary. The issue reads as follows:

> "1. Whether the suit is within the period of Limitation? OPP"

4. Plaintiff has examined himself and his son, besides tendering in evidence the copies of the notice under Section 80 CPC and the reply thereto received from defendant No.2.

5. I have heard the learned counsel for the parties. It is the plaintiff's own case that cause of action accrued to him on 12th March, 1995 when, for the first time, he came to know that the time for taking over of the hotel had been extended up to 28th March, 1994, while weeding out the old papers. It is a well-known principle of Law of Limitation that once the limitation starts running, no subsequent event can stop it from running. Now, in the present case the cause of action accrued to the plaintiff on 12th March, 1995, according to his own averment in para-30 of the plaint. Suit was filed on 11th May, 2001 or say long after the time limit of three years, prescribed for this type of claims, elapsed. Plaintiff's plea is that fresh lease of limitation became available to him on 12th May, 1998, the date on which he received the reply to the notice under Section 80 CPC from defendant No.2. Though it is not alleged that in the said reply defendant No.2 acknowledged its liability, learned counsel representing the plaintiff says that liability stands admitted by defendant No.2 in the reply. The submission made by the learned counsel is incorrect, because defendant No.2 has nowhere admitted its liability for anything. In any case, even it be assumed for the sake of argument that the defendant has admitted the liability, still limitation is not to be computed from the date of the reply, because the reply (Ex. P-3) is dated 5th May, 1998, when the limitation which started on 12th March, 1995, had already expired. Section 19 of the Limitation Act. Says that fresh lease of limitation on

acknowledgement of liability would be available to a plaintiff only if the acknowledgement is during the currency of the existing period of limitation. In the present case, as noticed above, the initial time of limitation had expired on 11th March, 1998. That means when the alleged acknowledgement was made by the plaintiff the initial limitation stood expired and, hence, Section 19 of the Limitation Act is not attracted.

6. In view of the abovestated position, preliminary issue regarding limitation is found against the plaintiff. Consequently, the suit is dismissed being, barred by time.

July 17, 2007(sd) **(Surjit Singh), J**